

**IN THE HIGH OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

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FRIDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVEN

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P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA

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WRIT PETITION No.13196 of 2007

Between:

Thallapally Krishna Murthy
S/o Narsaiah, aged about 45 years,
FP Shop Dealer, Medkapalli h/o Medapally (v)
Nallabelli Mandal, Warangal district. ... Petitioner

Versus

The Joint Collector, Warangal & Ors. ... Respondents

Counsel for the Petitioner : Sri P.Narasimha

Counsel for the Respondents : Govt.Pleader for Civil Supplies

THE HONOURABLE SRI JUSTICE P. S. NARAYANA

WP.NO.13196 of 2007

ORDER :

The matter is coming up 'for admission'. The learned Government Pleader for Civil Supplies had taken notice on 25-6-2007 to get instructions.

2. The writ petition is filed to declare the impugned Proceedings No.B/679/2007, dated 08-3-2007 issued by the Revenue Divisional Officer, Narsampet and the orders issued by the Joint Collector, Warangal, in Appeal No.13/2007, dated 30-5-2007, as illegal, arbitrary, unjust and opposed to all principles of natural justice, equity and fair play and hold that the petitioner is entitled to continue as fair price shop dealer no.24, Medapally (v), Nallabelli Mandal, Warangal district, with all consequential benefits and to pass such other and further suitable orders.

3. It is stated that the petitioner had been working as Fair Price Shop Dealer of Medapally (v), Nallabelli Revenue Mandal, Warangal district for the last several years and discharging his duties as per the provisions of Control Order without any complaints. It is stated that the third respondent without following the rules and principles of natural justice registered a case under section 6-A of the Essential Commodities Act, 1965 against the petitioner on 02-3-2007 at the instance of some interested persons and leveled the following

allegations against the petitioner:

- 1) That the dealer failed to maintain the stock register and distribution registers properly, thereby showing variations in ground balance in respect of sugar and kerosene.
- 2) That he has not distributed the essential commodities to the card holders.
- 3) That he has committed severe irregularities in distribution of the commodities to the customers.

Based on the inspection report, the second respondent issued the impugned proceedings no. B/679/2007 dated 08-3-2007, suspending the petitioner with immediate effect and the Mandal Revenue Officer, Nallabelli was directed to make alternative arrangements, which is clearly illegal as the same has been issued without following due procedure and also in gross violation of the principles of natural justice, equity and fair play.

4. It is stated that on the basis of the impugned proceedings, the first respondent issued show cause notice ECAC.No.16/2007 dated 22-3-2007 directing the petitioner to show cause within seven days from the date of receipt of the notice, as to why the entire seized stocks in this case should not be confiscated to the State for the above mentioned contraventions and directed the petitioner to appear before the Court of Joint Collector, Warangal on 31-3-2007 at 03:00 p.m. to adduce evidence in support of his case. It is stated that the

petitioner filed a counter in the above ECAC.No.16 of 2007 during April, 2007 that the allegation no.1 is false and incorrect that the petitioner had failed to maintain the stock register and distribution register properly and showing variations in ground balances in respect of sugar and kerosene. It is stated that the variation of sugar is concerned, it is a vague allegation and actually there is no variation as alleged in the 6-A notice. It is stated that the petitioner had lifted 5 quintals of sugar and distributed 95 Kgs sugar among the cardholders and on the date of inspection, the Deputy Tahsildar seized 4.05 quintals of sugar from the petitioner, and therefore, there is no variation. Admittedly according to 6-A notice, the variation is 27 Kgs and it is not a big quantity and is in permissible level. So far as Kerosene is concerned, it is stated that it is a false and incorrect that there is variation in kerosene since the petitioner had lifted 1330 litres of kerosene and distributed 1260 litres and collected coupon for such distribution and as such the excess balance of kerosene is created one for the purpose of the case. It is stated that excessive balance of kerosene will not constitute any offence. In so far as second allegation is concerned, it is stated that it is totally false that the petitioner have failed to produce the coupons to the extent of commodities distributed to the cardholders. The Mandal Revenue

Officer himself had not issued all the coupons and the coupons issued were already submitted and some of the coupons are with the petitioner, which the petitioner wanted to surrender them to Deputy Tahsildar but the petitioner did not receive the same intentionally with a view to make allegation and the coupons will be submitted before the Court on the date of hearing. It is further stated that the allegations are false and fabricated and there is no iota of evidence against the petitioner. The petitioner had therefore requested to drop the proceedings of confiscation against him and requested to return the seized stock in the interest of justice.

5. It is also further stated that the petitioner filed an appeal before the first respondent against the order of suspension dated 8-3-2007 under clause 20 of AP State PDS (Control) Order, 2001 on 17-3-2007 and prayed for stay. But however, the first respondent rejected the request of the petitioner for grant of stay on operation of orders issued by the second respondent dated 08-3-2007 vide order in Appeal No.13 of 2007 dated 30-5-2007.

6. Several of the averments had been made in the affidavit filed in support of the writ petition and strong reliance was made on the decision of this Court in **B. VENKATESWARA RAO V/s. REVENUE DIVISIONAL OFFICER, BHADRACHALAM, KHAMMAM DISTRICT**

AND ANR^[1] .

7. In the light of the facts and circumstances, since it is stated that an appeal already had been preferred before the first respondent against the order of suspension dated 08-3-2007, this Court is of the considered opinion that the writ petition be disposed of directing the first respondent to dispose of the Appeal No.13 of 2007 dated 30-5-2007, pending before the first respondent, within a period of four weeks from the date of receipt of a copy of this order. It is also further directed that the second respondent to complete the enquiry within a period of four weeks from the date of receipt of a copy of this order.

8. With the above directions, the writ petition is disposed of at the admission stage. No costs.

JUSTICE P . S.

NARAYANA .

14 / 9 /

2007

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^[1]) 1996 (3) ALD-885